

**COMMONWEALTH OF MASSACHUSETTS**  
**SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY**

No. \_\_\_\_\_

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DSCI CORPORATION  
Appellant,

v.

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
Appellee.

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ON APPEAL FROM RULINGS OF LAW BY THE DEPARTMENT OF  
TELECOMMUNICATIONS AND ENERGY

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PETITION FOR APPEAL PURSUANT TO G.L. c. 25, § 5

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DSCI Corporation (“DSCI”) hereby appeals from the Order issued by the Department of Telecommunications and Energy (“Department” or “DTE”) on April 21, 2006, in DTE Docket No. 05-28 (the “Order”). This appeal is brought pursuant to G.L. c. 25, § 5. A copy of the Order is attached hereto as Exhibit A.

**Issues on Appeal**

1. The issues that DSCI raises on appeal are as follows:
  - a. Whether the Department improperly failed to apply controlling federal and state law in upholding restrictions imposed by Verizon New England, Inc. d/b/a

Verizon Massachusetts (“Verizon”) on resale of a Verizon customer-specific pricing contract (“CSP”) with the Commonwealth of Massachusetts (“COMA CSP”) to DSCI, where Verizon limited DSCI’s ability to resell the COMA CSP only to certain “Eligible Entities” as determined exclusively by Verizon without any basis in Verizon’s costs or manner of service; and

b. Whether the Department erred in upholding Verizon’s decision to bar DSCI from combining per-line rates contained in the COMA CSP with usage rates in Verizon’s Corporate Rewards tariff based on a purported disallowance for CSP plan calls, where the COMA CSP has no associated usage plan and there is no concern about improper duplication of usage discounts by DSCI.

### **Legal Background**

2. A CSP allows Verizon and other incumbent local exchange carriers (“ILECs”) to respond to a competitive situation by negotiating special rates, terms and conditions for a customer or class of customers that are different from standard tariffed offerings.<sup>1</sup> Pursuant to longstanding Department precedent and statutory tariffing requirements, Verizon codifies CSP arrangements in a contract with the customer and, in turn, memorializes the contract terms in a tariff filing. Current CSP contracts are located in Verizon’s tariffs at Tariff No. 12.

3. Verizon must make CSP arrangements available for resale to competitive local exchange carriers (“CLECs”), such as DSCI, at cost, less a wholesale discount

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<sup>1</sup> CSPs also can be referred to as “Contract Services Arrangements,” “Special Pricing Arrangements,” or “Individual Case Basis Rates.”

representing the ILEC's avoided costs, pursuant to, inter alia, Verizon's tariffs<sup>2</sup> and applicable federal law, including 47 U.S.C. §251(c)(4) and 47 CFR §§ 51.601 et seq. ("Resale").<sup>3</sup> In seeking to take advantage of competitive opportunities made available by CSP resale, CLECs are permitted to aggregate the traffic of multiple end user customers that the CLEC seeks to serve using the resold CSP, provided that the customers are similarly situated to customers of Verizon's original contract.<sup>4</sup>

4. Under both federal and state telecommunications laws, resale restrictions are strongly disfavored. Conditions or limitations imposed on resale of CSPs cannot be unreasonable or discriminatory or prevent CLECs from using resale as a means of entry.<sup>5</sup>

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<sup>2</sup> Verizon Tariffs, DTE No. 14, Section 5.3.4 ("Services that the Telephone Company provides to its end users on a customer specific basis under DTE MA No. 12, will be made available for resale....").

<sup>3</sup> Section 251(c)(4) provides that ILECs are required:

“(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and  
(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service....”

See Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina, 13 F.C.C.R. 539, Memorandum Opinion and Order (1997) (the “BellSouth Section 271 Order”), ¶¶ 215-223 (confirming that CSPs and similar arrangements are subject to resale at a wholesale discount under 47 U.S.C. § 251(c)(4)); U.S. West Communications, Inc. v. Hix, et al., 183 F. Supp. 2d 1249, 1255-57 (D.C. Colo. 2000) (same).

<sup>4</sup> Application of Verizon for Authorization to Provide In-Region, InterLATA Services in Massachusetts, 16 F.C.C.R. 8988, Memorandum Opinion and Order (2001), ¶ 217 (“Verizon says that it commits in its interconnection agreements and tariffs to making its retail services available to competing carriers at wholesale rates... [and] applies the wholesale discount to customer specific arrangements (CSAs).... Competing carriers may purchase at the wholesale discount CSAs to resell to new customers. Verizon permits competing carriers that resell CSAs to meet minimum volume requirements by aggregating the traffic of multiple end-user customers, provided that those customers are similarly situated to the customer(s) of Verizon's original contract”).

<sup>5</sup> 47 U.S.C. § 251(c)(4); 47 CFR §§ 51.613(a)(1) and (b); see Hix, 183 F. Supp. 2d at 1256 (“The refusal to sell CSAs at a wholesale discount ‘impedes competition for [an incumbent’s] large-volume customers and thus impairs the use of resale as a vehicle for competitors to enter [the local] market’”) (quoting the BellSouth Section 271 Order, supra, 13 F.C.C.R. 539 at ¶ 215). See also G.L. c. 159, §§ 14 (prohibition on unreasonable or unjustly discriminatory practices), 16 (same).

Restrictions based on customer class characteristics are limited to bans on selling residential services to business customers.<sup>6</sup>

### **Procedural History**

5. On March 24, 2005, DSCI filed a Complaint with the Department alleging that Verizon unreasonably and unlawfully prevented DSCI from reselling certain Verizon CSPs, most notably the COMA CSP, to DSCI end-user customers. The Department docketed this matter as DTE Docket No. 05-28.

6. On April 19, 2005, Verizon filed its Answer, denying that its restrictions on the resale of its CSPs were contrary to applicable laws and regulations.

7. Following a properly noticed public hearing and procedural conference, the Department issued a May 18, 2005 Notice establishing the procedural schedule in this matter.

8. On July 26, 2005, the Department held an evidentiary hearing at which DSCI and Verizon presented testimony and DSCI, Verizon and DTE staff conducted cross-examination. The evidentiary record consists of 33 exhibits submitted by DSCI, four exhibits submitted by Verizon, three exhibits submitted by the Department and six responses by Verizon to record requests propounded by the Department and DSCI.

9. DSCI and Verizon filed simultaneous Initial Briefs on August 9, 2005 and Reply Briefs on August 16, 2005.

10. On April 21, 2006, the Department issued the Order which included the following principal findings and conclusions:

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<sup>6</sup> 47 CFR § 51.613(a)(1) (specifying the restrictions on resale that “may be imposed” by an ILEC).

a. First, while acknowledging that Verizon's restriction on the sale of the COMA CSP contract solely to "Eligible Entities" as defined by Verizon had no basis in costs or manner of service compared to the DSCI customer base that would be served by the resold CSP, the Department upheld the Verizon-imposed resale restrictions on the grounds that COMA purportedly was a unique customer, citing State law purchasing requirements applicable to contracts with Massachusetts agencies and the presence of dedicated staff to administer COMA telecommunications contracts.<sup>7</sup>

b. Second, the Department upheld Verizon's restriction that precluded DSCI from combining the per-line rates contained in the COMA CSP contract with the usage rates in Verizon's Corporate Rewards tariff, claiming that such combination was barred by tariff language that Corporate Rewards was not available with CSP plan calls.<sup>8</sup>

c. Third, the Department accepted DSCI's recommendation that Verizon implement a process, with associated deadlines, for responding to future requests by CLECs to resell Verizon CSPs.<sup>9</sup>

d. Finally, the Department rejected DSCI's request that Verizon be subject to monetary sanctions for its unreasonable and unlawful actions in responding to DSCI's CSP resale requests with respect to the COMA CSP and other CSPs.<sup>10</sup>

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<sup>7</sup> See Order, pp. 10-14.

<sup>8</sup> See Order, pp. 16-17.

<sup>9</sup> See Order, pp. 21-24.

<sup>10</sup> See Order, pp. 32-33.

### **Claim of Error**

11. In this appeal, DSCI challenges only the findings outlined above in paragraphs 10(a) and (b) and the associated pages of the Order.

12. As will be fully explained on brief, the Department's decision upholding the Verizon restriction that limited DSCI's ability to resell the COMA CSP under federal and state law to a limited set of "Eligible Entities" selected by Verizon violates applicable federal and state telecommunications statutes and rules, is arbitrary and capricious and an abuse of discretion, and/or is unsupported by substantial record evidence, and must be reversed. See G.L. c. 30A, § 14 (standards for review of agency decisions).

13. The Order fails to properly apply the restrictive federal law standard that resale restrictions are void unless the ILEC meets its burden of proving that the restrictions are both reasonable and nondiscriminatory.

14. Where Verizon conceded that no cost-to-serve difference exists between the COMA customer base and the aggregated DSCI end user customer base that would be served by the resold COMA CSP and that DSCI would meet minimum volume requirements under the COMA CSP, the restriction on DSCI's ability to resell the Agreement only to a limited set of "Eligible Entities" selected by Verizon is both unreasonable and discriminatory and improperly prevents DSCI from competing against Verizon using the resold CSP.

15. The Order's upholding of the Verizon resale restriction based on the purportedly unique customer characteristics of COMA has no support in case law and is contrary to applicable federal statutes and regulations.

16. The Order's upholding of the Verizon resale restriction improperly ignores the record evidence that COMA is materially identical, from a cost of service basis, to any large multi-location commercial customer as well as to the aggregated DSCI end user customer base. The reliance on detailed State purchasing procedures and dedicated contract administration staff improperly ignores un rebutted record evidence that large multi-location commercial customers also have very detailed purchasing procedures and dedicated contract administration staff. The grounds cited in the Order cannot be relied upon as a reasonable and nondiscriminatory basis for denying DSCI's resale rights.

17. In addition, the Department's separate ruling upholding Verizon's position that DSCI is precluded from combining the per-line rates contained in the COMA CSP Contract with usage rates in Verizon's Corporate Rewards tariffs also constituted an error of law, is arbitrary and capricious and an abuse of discretion and/or is unsupported by substantial record evidence, and must be reversed.

18. As the COMA CSP has no associated usage rates, DSCI was entitled to use any available Verizon usage plan to meet the needs of DSCI end users. DSCI requested access to the usage plan contained in the Verizon Corporate Rewards tariff, but was improperly rejected by Verizon, a decision affirmed with virtually no explanation in the Order.

19. The Order's finding that Corporate Rewards usage rates are unavailable to DSCI because the tariff contains a disallowance for calls that are subject to a CSP plan is plainly erroneous, as the COMA CSP has no associated usage plan. There is thus no disallowance and no concern that DSCI would be able to take advantage of multiple

discount programs under both a CSP usage plan and the Corporate Rewards usage plan, which is the evident basis for the tariff disallowance.

20. The Order's disallowance of usage rates under the Corporate Rewards tariff are both unreasonable and discriminatory as to DSCI and must be reversed.

21. For all of the reasons stated above, DSCI is aggrieved by the errors of law in the Order and seeks review and reversal pursuant to G.L. c. 25, § 5.


22. DSCI requests that this appeal be reserved and reported to the Supreme Judicial Court for the Commonwealth so that these matters can be reviewed by the full Court.

**WHEREFORE**, DSCI prays that this Court and, where applicable, the Supreme Judicial Court for the Commonwealth, (1) reserve and report this appeal to the full Court, (2) review this appeal of the Department's Order pursuant to G.L. c. 25, § 5, (3) reverse the Department's conclusion that DSCI may resell the COMA CSP only to the limited class of "Eligible Entities" selected by Verizon, (4) reverse the Department's conclusion that DSCI cannot avail itself of usage rates set forth in Verizon's Corporate Rewards tariffs, and (5) order any other relief to DSCI that is just and meet.

Respectfully submitted,

DSCI CORPORATION

By



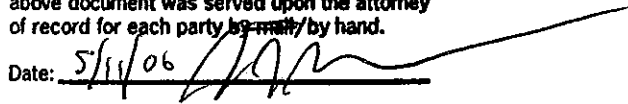
Robert J. Munnelly, Jr.  
Murtha Cullina LLP  
99 High Street  
Boston, Massachusetts 02110  
(617) 457-4000  
BBO# 555202

Dated: May 11, 2006

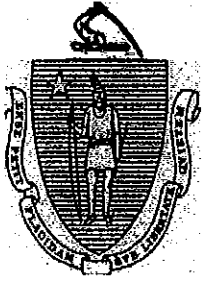
**Certificate Of Service**

I hereby certify that on this day a true copy of the above document was served upon the attorney of record for each party ~~by mail~~ by hand.

Date: 5/11/06







**The Commonwealth of Massachusetts**  
**DEPARTMENT OF**  
**TELECOMMUNICATIONS AND ENERGY**

D.T.E. 05-28

April 21, 2006

Complaint of DSCI Corporation for Declaratory Orders to Ensure Verizon-Massachusetts  
Compliance with Resale Obligations with Respect to Customer Specific Pricing Contracts

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APPEARANCES: Robert J. Munnelly, Jr., Esq.  
Murtha Cullina LLP  
99 High Street, 20<sup>th</sup> Floor  
Boston MA 02110  
FOR: DSCI CORPORATION  
Petitioner

Bruce B. Beausejour, Esq.  
Keefe B. Clemons, Esq.  
Verizon Massachusetts  
185 Franklin Street, 13<sup>th</sup> Floor  
Boston MA 02110  
FOR: VERIZON NEW ENGLAND, INC., D/B/A VERIZON  
MASSACHUSETTS  
Respondent

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On March 24, 2005, DSCI Corporation ("DSCI") filed a Complaint with the Department of Telecommunications and Energy ("Department") alleging that Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"), an incumbent local exchange carrier ("ILEC"), unreasonably and unlawfully prevented DSCI, a competitive local exchange carrier ("CLEC"), from reselling Verizon customer specific pricing ("CSP") contracts<sup>1</sup> to DSCI end-user customers. On April 19, 2005, Verizon filed its Answer, asserting that its restrictions on the resale of its CSP contracts are reasonable, nondiscriminatory, and consistent with applicable Federal law, state law, and Federal Communications Commission ("FCC") rules. The Department docketed the matter as D.T.E. 05-28.

Pursuant to notice duly issued, the Department held a public hearing and procedural conference on May 17, 2005. There were no requests to intervene. On July 26, 2005, the Department held an evidentiary hearing. DSCI presented testimony of Sean Dandley, DSCI's

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<sup>1</sup> CSP contracts are customer-specific variations to a carrier's standard tariff offerings and are filed with the Department as part of CSP tariff filings. See generally, AT&T Communications of New England, D.P.U. 90-24 (1991) (establishing procedures for CSP tariff filings). CSP tariff offerings are also referred to as contract service arrangements ("CSAs"), special pricing arrangements ("SPAs"), and individual case basis ("ICB") rates (see Exh. DSCI-1, at 1). A CSP tariff filing includes the following: (1) a copy of the CSP contract; (2) a detailed description of services to be offered under the CSP contract; (3) a discussion of the competitive situation that prompted the need for the CSP contract; and (4) tariff language summarizing the major terms and conditions of the CSP contract (id. at 2). ILECs' CSP tariff offerings and standard tariff offerings are subject to resale requirements. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, at ¶ 948 (rel. Aug. 8, 1996) (subsequent history omitted) ("Local Competition Order").

President and Chief Executive Officer. Verizon presented testimony of Carolyn B. Jussaume, Corporate Account Manager for Verizon Enterprise Business Customers, and Pamela McCann, Executive Director for Wholesale Marketing and Sales for Verizon. DSCI and Verizon filed briefs on August 9, 2005, and reply briefs on August 16, 2005.

The evidentiary record consists of 33 exhibits submitted by DSCI, four exhibits submitted by Verizon, three exhibits submitted by the Department, and six responses by Verizon to record requests propounded by the Department and DSCI.

## II. STANDARD OF REVIEW

Federal law imposes an obligation upon all ILECs to offer for resale at wholesale rates to CLECs "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4). The FCC stated that Section 251(c)(4) "makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings." Local Competition Order at ¶ 948. Hence, the FCC has determined that there is no basis under Federal law for excluding discounted offerings, such as CSP contracts, from the resale obligation. Id. Further, an ILEC may not prohibit or impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services to CLECs. 47 U.S.C. § 251(c)(4). The FCC has concluded that "resale restrictions are presumptively unreasonable." Local Competition Order at ¶ 939. An ILEC that imposes a restriction on the resale of its telecommunications services may rebut this presumption, and bears the burden of proving that such restriction is reasonable and nondiscriminatory. Id.; 47 C.F.R. § 51.613(b). In addition, pursuant to

47 U.S.C. § 251(c)(4)(B), “a state Commission may . . . prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.”

### III. RESALE RESTRICTIONS ON THE COMA CSP CONTRACT

#### A. Introduction

Verizon has entered into a contract for the provision of telecommunications services with the Commonwealth of Massachusetts (the “COMA CSP contract”) (see Exh. DSCI-4).<sup>2</sup> Pursuant to the COMA CSP contract, Verizon provides telecommunications services, including analog and integrated services digital network and Centrex services, to certain state and local government and non-profit entities (id.).<sup>3</sup> DSCI seeks to resell the COMA CSP contract to its commercial customers and argues that Verizon’s insistence that DSCI may resell the COMA

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<sup>2</sup> Verizon’s contract with the Commonwealth includes Centrex services, therefore it is a Facilities-Based Payment Option (“FPO”) contract. See New England Telephone and Telegraph Co., D.P.U. 85-275/85-276/85-277 (Dec. 23, 1985) (establishing procedures for filing of FPO tariffs). FPO contracts are a form of CSP contract. See D.P.U. 90-24, at 17. For ease of reference, we refer to the Commonwealth contract as the COMA CSP contract throughout this Order.

<sup>3</sup> The state and local government and non-profit entities subject to the COMA CSP contract are referred to in the contract as “Eligible Entities” (see Verizon D.T.E. MA No. 12, Part A, Section 4.8.1.A (entered into the evidentiary record as Exh. DSCI-4)). “Eligible Entities” are “all constitutional offices, the legislature, and the judiciary; cities, towns, municipalities, counties and other political subdivisions of the Commonwealth including schools, and other service districts; authorities, commissions, institutions of higher education, and quasi-public agencies, and eligible Not-For-Profit entities currently contracting with the Commonwealth to provide human and social services; and other eligible entities designated in writing by the State Purchasing Agency” (id.). A current list of “Eligible Entities” can be found at [www.mass.gov](http://www.mass.gov) in the Operational Services Division section under “Buying From A Contract” (see Exh. VZ-1, at 6).

CSP contract only to the specific customers identified in the contract is an unreasonable restriction on resale.

B. Positions of the Parties

1. DSCI

DSCI argues that Verizon has placed restrictions on the resale of the COMA CSP contract that are unreasonable, discriminatory, and anti-competitive (Exh. DSCI-18, at 3-4; DSCI Brief at 7). DSCI argues that any limitation on the resale of the COMA CSP contract must be cost-based (Exh. DSCI-18, at 6; DSCI Brief at 7). Specifically, DSCI asserts that Verizon must be required to document additional costs associated with providing the COMA CSP contract to DSCI end-users before Verizon is permitted to impose resale limitations (Exh. DSCI-18, at 9-10; DSCI Complaint at ¶ 51). DSCI points to determinations in other jurisdictions where public utility commissions have found that resale end-users are similarly situated if, in part, the “costs of service” are the same (DSCI Complaint at ¶ 51, n.27 citing e.g., In re Consideration of Bell South Telecommunications, Inc., Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996, Florida Public Service Commission, Docket No. 960786A-TL, Opinion, No. PSC-02-1204-FOF-TL, 2002 Fla. PUC LEXIS 776, at \*315 (Sept. 25, 2002) (“Bell South Florida”)). DSCI contends that, in lieu of providing a cost basis for the COMA CSP contract resale limitation, Verizon has unilaterally created a customer class in violation of state and Federal law (Exh. DSCI-18, at 6; DSCI Brief at 6-7).

DSCI argues that Federal law delineates only two classes of service provided by common carriers: 1) commercial; and 2) residential (Tr. at 8). DSCI contends that, by limiting DSCI's resale to those entities specified in the COMA CSP contract (i.e., the "Eligible Entities"), Verizon has, in essence, created a new class of service that consists of Massachusetts government and non-profit agencies (Exh. DSCI-18, at 5-6; Tr. at 8, 13; DSCI Reply Brief at 2-3). DSCI further contends that federal regulations permit ILECs to impose customer class restrictions only insofar as residential products may not be resold to commercial customers and vice versa (DSCI Reply Brief at 2-3, citing 47 C.F.R. § 51.613(a)(1); Exh. DSCI-18, at 8). DSCI also asserts that Verizon is inappropriately requiring that Verizon's contractual obligations with the Commonwealth bind DSCI and its resale end-users (DSCI Brief at 8). DSCI further argues that there is nothing unique about contracting with the Commonwealth, such that would justify the creation by Verizon of this new category of customer (Exh. DSCI-18, at 9; Tr. at 8-9; DSCI Brief at 7; DSCI Reply Brief at 2). Rather, DSCI contends that all business customers seek to use their market power and volume leverage to obtain attractive rates (Exh. DSCI-18, at 9; Tr. at 8-9; DSCI Brief at 7-8).

Further, DSCI contends that Verizon has committed before the FCC to permit resellers to aggregate customers in order to meet volume requirements, and, therefore, DSCI should be permitted to aggregate its multi-location commercial customer base (DSCI Brief at 4-5, citing Application of Verizon, et al., for Authorization to Provide In-Region InterLATA Services in Massachusetts, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 9110-9111, at ¶ 217 (2001) ("FCC Massachusetts 271 Order")). If, as DSCI argues, by



aggregating its commercial customers it is able to meet the volume requirements and also agrees to abide by the applicable terms and conditions, then it should be permitted to resell the COMA CSP contract (Exh. DSCI-18, at 9; Tr. at 38).

2. Verizon

Verizon contends that there is no merit to DSCI's claim and that Verizon's restrictions on DSCI's resale of the COMA CSP contract are reasonable and nondiscriminatory (Verizon Brief at 2, 14; Verizon Reply Brief at 1-2). Verizon contends that in executing the COMA CSP contract resale agreement, DSCI agreed to comply with all "relevant" terms and conditions and that the "Eligible Entities" restriction is a relevant term and condition (Verizon Brief at 5-6, 9-10). Verizon also asserts that class restrictions, such as limiting resale of the COMA CSP contract to the specified "Eligible Entities" only, are permitted by federal regulations (id. at 10-11, citing 47 C.F.R. § 51.613(b)). Verizon further argues that the uniqueness of the Commonwealth of Massachusetts as a customer justifies the imposition of this class restriction (id. at 11-13; Verizon Reply Brief at 1-2).

In outlining the reasonableness of its restrictions, Verizon first asserts that there is a significant difference between the legal and policy framework of the Commonwealth and that of ordinary business customers (Verizon Brief at 11-12). Verizon points to the state-mandated competitive bidding and procurement requirements as well as the fact that certain requirements are non-negotiable as a matter of law (Exh. VZ-1, at 2-5; Exh. VZ-2, at 5; Tr. at 53-58; Verizon Brief at 11-12). Second, Verizon asserts the Commonwealth has established the customers that may receive service under the COMA CSP contract, and it is required by the

Commonwealth to provide service to these "Eligible Entities" (Tr. at 65-66; Verizon Brief at 12). Verizon argues that absent such a requirement, it would not supply such favorable rates or terms to certain of these entities (Exh. VZ-1, at 7; Verizon Brief at 12). Third, Verizon points to the Commonwealth's market power and asserts that due to its size and value as a customer, Verizon offers the Commonwealth some of the lowest rates available to any commercial customer (Exh. VZ-1, at 7; Verizon Brief at 12-13). Fourth, Verizon asserts that the Commonwealth's procurement requirements resulted in low rates and favorable terms and conditions that are not provided to ordinary business customers (Exh. VZ-1, at 7; Verizon Brief at 13). Fifth, Verizon argues that its COMA CSP contract resale restrictions are narrowly-tailored to ensure that ordinary business customers do not benefit from the Commonwealth's competitive procurement practices and bid requirements (Verizon Brief at 13). Finally, Verizon contends that if the Department permits DSCI to resell the COMA CSP contract to its ordinary business customers, Verizon's ability to continue offering favorable terms and conditions to the Commonwealth will be jeopardized (Exh. VZ-1, at 7; Verizon Brief at 14).

Verizon argues that permitting resale of the COMA CSP contract to other than the "Eligible Entities" identified in the COMA CSP contract would fundamentally alter the intended scope of the contract to Verizon's financial detriment (Verizon Answer at 1-2). Verizon also asserts that it does not permit its own salespeople to sell the COMA CSP contract to customers that do not qualify as "Eligible Entities" and thus should not be required to allow CLECs to resell the COMA CSP contract to "non-eligible" end-users (Verizon Brief at 10).

Verizon asserts that it will permit DSCI to resell the COMA CSP contract to the “Eligible Entities,” and, thus, Verizon asserts that its restriction is not discriminatory (Exh. VZ-2, at 5-6; Verizon Brief at 14). Verizon also asserts that DSCI’s argument that any restriction should be cost-based is unduly restrictive and should not foreclose Verizon’s narrowly-tailored class restriction (Verizon Brief at 9; Verizon Reply Brief at 2, n.1).

C. Analysis and Findings

1. Introduction

We begin by noting that the parties do not dispute that Federal law permits DSCI to resell the COMA CSP contract (DSCI Complaint at ¶ 10; Verizon Answer at ¶ 10).<sup>4</sup> Resale of ILEC CSP contracts is specifically required by the FCC in the Local Competition Order at ¶ 948. See also 47 U.S.C. § 251(c)(4); 47 C.F.R. §§ 51.601 et seq. Verizon does not argue that DSCI is wholly precluded from reselling the COMA CSP contract; rather, Verizon argues that DSCI is precluded from reselling the COMA CSP contract to any customer other than the “Eligible Entities” specified in the COMA CSP contract itself.<sup>5</sup> Therefore, the

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<sup>4</sup> Resale is one of the three mechanisms (in addition to facilities-based entry and entry using ILEC unbundled network elements (“UNEs”)) that Congress developed in the Telecommunications Act of 1996 (the “Act”) for CLEC entry into the Bell Operating Companies’ monopoly market. See 47 U.S.C. § 251(c)(2), (3), (4); Local Competition Order at ¶ 12.

<sup>5</sup> Prior to commencement of this proceeding, there was some confusion as to whether Verizon was further limiting DSCI’s resale of the COMA CSP contract to only the “Eligible Entities” who were not already receiving service from Verizon under the CSP contract (see Tr. at 100-101; Verizon Brief at 5-6). Verizon clarified that DSCI could resell the COMA CSP contract to the “Eligible Entities” currently receiving service from Verizon, but only after those customers terminated their service agreements with  
(continued...)

narrow issue for resolution by the Department is to whom may DCSI resell the COMA CSP contract. For the reasons outlined below, we determine that Verizon has met its burden to demonstrate that its refusal to permit DSCI's resale of the COMA CSP contract to customers other than those specified in the contract is a reasonable restriction on resale.

2. Verizon's COMA CSP Contract

a. Introduction

The FCC has held that carriers' resale obligations under the 1996 Telecommunications Act are subject to "reasonable restrictions on promotions and discounts." Local Competition Order, at ¶ 952. Treatment of CSPs falls under this FCC interpretation of the Act. In recognition of the widely varied and not fully predictable circumstances that a competitive telecommunications market may present, the FCC also further noted that the "substance and specificity of rules concerning discount and promotion restrictions may be applied to resellers in marketing their services to end-users is a decision best left to state commissions, which are more familiar with the particular business practices of their incumbent LECs and local market conditions." *Id.* FCC regulation envisions and, where warranted, countenances an ILEC's imposition of class restrictions on resale, if a state commission finds such restrictions "reasonable and nondiscriminatory." 47 C.F.R. § 51.613. Thus, the Commission is authorized, indeed required, to render a judgment in the dispute presented here.

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<sup>5</sup>(...continued)

Verizon (Tr. at 105; see also Exh. DSCI-VZ-1-9).

Verizon presents two primary arguments supporting its position that, notwithstanding “the normal operation of the resale provisions of the [A]ct” (Tr. at 75-76), Verizon may restrict DSCI to reselling the COMA CSP contract to only the customers specified in the contract (i.e., “Eligible Entities”). First, Verizon argues that the Commonwealth as a customer and the COMA CSP contract are unique and thus the creation of a new class of customers is appropriate. Second, Verizon argues that if it is required to make the COMA CSP contract available for resale to customers other than the “Eligible Entities,” Verizon will no longer be able to provide such favorable contract terms to the Commonwealth in future CSP contracts. We address each argument below.

b. Uniqueness of the Commonwealth and the COMA CSP Contract

Verizon argues that the Commonwealth as a customer and the COMA CSP contract are unique, and as such it is permissible for Verizon to limit its resale to only the customers identified in the COMA CSP contract itself. Verizon asserts that the COMA CSP contract is unique on the basis that it is a large, “living” document that requires dedicated staff to monitor and maintain (see Exh. VZ-1, at 4-5; Tr. at 53-73). While the sheer size of an especially large customer (and in the Commonwealth’s case, a particularly large customer with numerous “Eligible Entities” in train) may not, of itself, be dispositive in a dispute such as the one before

us, it can be a distinguishing factor in arriving at a judgment whether customers are “similarly situated.”<sup>6</sup>

We agree with Verizon that the Commonwealth is a unique customer and that the legal framework under which contracts between Verizon and the Commonwealth are created justify Verizon’s restriction of resale of the COMA CSP contract to “Eligible Entities” as defined by the Commonwealth. Our determination in this matter hinges on whether Verizon met its burden to demonstrate that its restriction on the COMA CSP contract is reasonable because there are no other entities that are similarly situated to the “Eligible Entities” beyond the entities described in the COMA CSP contract. We find that Verizon has met this burden.

Pursuant to Massachusetts law and regulations, the Commonwealth is given the authority to delineate those entities that are eligible to use Commonwealth-negotiated contracts.

See generally G.L. c. 30B; 801 C.M.R. § 21.04. This authority of the Commonwealth imposes unique requirements on Verizon, as a successful bidder for the Commonwealth’s

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<sup>6</sup> In its application to the FCC for approval to enter into the in-region long distance market, Verizon asserted: “With regard to CS[P contracts], Verizon does not restrict resellers to reselling the CS[P contract] only to the customer that Verizon served with that CS[P contract]. Resellers may resell any CS[P contract] to any similarly situated customer that otherwise meets the terms and conditions of that CS[P contract].” Application of Verizon New England, Inc. for Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, Application, App. A, Vol. 1, Declaration of Paul A. Lacouture and Virginia P. Rueterholz, at ¶ 299 (filed with the FCC January 16, 2001) (emphasis added). The FCC likewise stated that “[c]ompeting carriers may purchase at the wholesale discount CS[P contracts] to resell to new customers” (FCC Massachusetts 271 Order at ¶ 217), and that Verizon allows CLECs to aggregate the traffic of multiple customers to meet CSP contract volume requirements, “provided that those [CLEC] customers are similarly situated to the customer(s) of Verizon’s original contract.” Id. (emphasis added).

custom, that justify the creation of a subclass of commercial customers that are eligible to take the service under the contract. For example, the Commonwealth's legal authority to enter into contracts is contained in procurement statutes and regulations that are non-negotiable. See, e.g., G.L. c. 30B. In addition, the Commonwealth requires the agreement of all carriers that seek to enter into CSP contracts with the Commonwealth to provide service to hundreds of entities that supply some service to the Commonwealth, and the list can, and likely does fluctuate over the duration of the contract (i.e., "Eligible Entities") (see Verizon Brief at 9-12), thus imposing a significant and uncommon contract management burden on the successful bidder. The Commonwealth, and not the contractor, is given the authority to delineate those entities that are eligible to use Commonwealth-negotiated contracts pursuant to Massachusetts law and regulations. See generally G.L. c. 30B; 801 C.M.R. § 21.04.

Furthermore, the Commonwealth's standard contract terms and conditions prohibit termination liability, likely a rarity among contracts with business customers in the telecommunications industry, and a provision that substantially alters the fundamentals of the contracting process. For these reasons, we find that there are no other commercial customers that are similarly-situated to the "Eligible Entities" as set forth by the Commonwealth and subject to the COMA CSP contract. The restriction imposed by Verizon on resale of the COMA CSP contract solely to the "Eligible Entities" is reasonable and nondiscriminatory in accordance with the FCC's interpretation of the Act and is hereby allowed.

c. Effect on Future Contracts with the Commonwealth

Verizon also argues that, if it is required to offer the COMA CSP contract to DSCI for resale to customers other than the “Eligible Entities” specified in the contract itself, Verizon will no longer be able to provide such favorable contract terms to the Commonwealth in the future (Exh. VZ-1, at 7; Tr. at 80-81). Expressing an opinion on this prediction of a collateral effect of the instant dispute is not essential to rendering the decision we are asked to render here, and so we need not reach the matter.

d. Conclusion

In finding that there are no customers that are similarly situated to the Eligible Entities, we are not suggesting—nor are we being asked to hold—that an ILEC may create a new “class of customers” in every CSP contract as a means of a loophole by which an ILEC can avoid the resale rules. Instead, we are limiting our finding to the narrow set of circumstances in this proceeding and determine it is appropriate for Verizon to delineate a subclass of commercial customers that are permitted by law and regulations to use the COMA CSP contract via CLEC resale (i.e., the “Eligible Entities”).

With respect to DSCI’s ability to resell the COMA CSP contract to “Eligible Entities,” we note that the Uniform Procurement Act mandates that Executive departments<sup>7</sup> of the Commonwealth take service only from the vendor that negotiates and is awarded the contract.

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<sup>7</sup> Executive departments are those departments and administrative agencies that report to the Governor, e.g., the Executive Office for Administration and Finance, the Department of Education, the Board of Higher Education, Executive Office of Public Safety, and Executive Office of Health and Human Services (and the agencies that serve under them). See M.G.L. c. 30, § 2.



See G.L. c. 30B; 801 C.M.R. § 21.00 et seq. Therefore, we determine that DSCI would be precluded from reselling the COMA CSP contract to Executive departments; however DSCI may resell the COMA CSP contract to any other "Eligible Entity" (as defined) that may find DSCI to be an attractive vendor. Further, we note that the definition of "Eligible Entities" as included in the COMA CSP contract is not consistent with the current list of "Eligible Entities" as outlined by the Commonwealth.<sup>8</sup> Because the Commonwealth has the sole power to determine which entities will be included as "Eligible Entities," we direct DSCI and Verizon to refer to the Commonwealth for the most recent eligibility list.

IV. RESALE RESTRICTIONS ON COMBINING THE CORPORATE REWARDS TARIFF WITH THE COMA CSP CONTRACT

A. Introduction

Corporate Rewards is a tariffed retail service offering Verizon provides to business customers, available in tariff D.T.E. MA No. 10, Part A, Section 15.<sup>9</sup> DSCI seeks a ruling from the Department that Verizon must make available to DSCI for resale the usage rates

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<sup>8</sup> A current list of "Eligible Entities" can be found at [www.mass.gov](http://www.mass.gov) in the Operational Services Division section under "Buying From A Contract" (see Exh. VZ-1, at 6).

<sup>9</sup> Corporate Rewards is a billing arrangement that provides Verizon's business customers with an optional calling plan and various discounts (i.e., usage on a per-line or per-minute basis, volume discounts, loyalty discounts, and access line discounts). D.T.E. MA No. 10, Part A, Section 15.10.1.A(1)-(4) (entered in to the evidentiary record as Exh. DSCI-19).

included in the Corporate Rewards tariff, and not limit DSCI to the usage rates contained in the Customer 38 CSP contract,<sup>10</sup> when DSCI resells the COMA CSP contract.<sup>11</sup>

B. Positions of the Parties

1. DSCI

DSCI argues that Verizon cannot bar DSCI from combining tariffed Corporate Rewards usage rates with the per-line rates in the COMA CSP contract (DSCI Brief at 9). DSCI argues that the plain language in Verizon's tariffs state that: 1) Corporate Rewards is available unless there is a CSP contract usage plan; 2) the COMA CSP contract does not have an associated usage plan; and 3) nothing in the COMA CSP contract or the Customer 38 CSP contract requires that the Customer 38 CSP contract must serve as the usage plan associated with the COMA CSP contract (id. at 11). DSCI further argues that DSCI has the right to combine the COMA CSP contract with Corporate Rewards or with the Customer 38 CSP contract based on which usage plan best meets the need of the particular customer (id. at 11-12).

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<sup>10</sup> The Customer 38 CSP is a separate CSP contract also with the Commonwealth of Massachusetts, summarized in Verizon's tariff, D.T.E. MA No. 12, Part E, Section 2 (entered into the evidentiary record as Exh. DSCI-11).

<sup>11</sup> Usage-based rates are variable local and toll charges based on measured (usually per-minute) or unlimited use; per-line rates are monthly fixed line charges assessed for access to the network notwithstanding the amount of use. Unless an end-user has a flat-rate calling plan, billing for services consists of a combination of usage and per-line charges.

2. Verizon

Verizon argues that DSCI is precluded from combining usage under the Corporate Rewards tariff with the per-line rates available under the COMA CSP contract (Verizon Brief at 14-15). Verizon argues that, while specific usage rates are not set forth in the COMA CSP contract, the only volume discount usage plan available to “Eligible Entities” under the COMA CSP contract is contained in the Customer 38 CSP contract (*id.* at 15). Moreover, argues Verizon, the Corporate Rewards tariff expressly provides that it is not available with usage under CSP contract plan calls, which means that the tariff precludes usage being included that otherwise is contained in a CSP contract, and here, usage is contained in the Customer 38 CSP contract (*id.* at 15).

C. Analysis and Findings

In this section we determine whether the resale restriction Verizon has imposed to prevent DSCI from reselling the tariffed Corporate Rewards usage rates with the per-line rates in the COMA CSP contract is reasonable and non-discriminatory. The point of contention is whether or not, when reselling the COMA CSP contract to the “Eligible Entities” as discussed in the previous section of this Order, DSCI is limited to the usage rates in the Customer 38 CSP contract. Verizon argues that “the only volume discount usage plan available to ‘[E]ligible [E]ntities’ under the COMA CSP contract is contained in the Customer 38 CSP [contract]” (Verizon Brief at 15), and the Corporate Rewards tariff specifically states that usage in that tariff is not available with usage under “[a]ny local, toll or circuit switched data optional calling plan/customer specific pricing (CSP) plan calls . . .” (D.T.E. MA No. 10,

Part A, Section 15.10.2.B.1; see Tr. at 102). Accordingly, we agree with Verizon that DSCI is precluded from combining the usage rates contained in Verizon's Corporate Rewards tariff with the per-line rates contained in the COMA CSP contract when DSCI resells the COMA CSP contract to the "Eligible Entities."

V. OTHER ISSUES

A. Introduction

DSCI requests that the Department take the following action concerning Verizon's conduct in responding to DSCI's requests to resell various CSP contracts: (1) the Department should require that Verizon implement a formal process for addressing future CLEC requests to resell CSP contracts; (2) the Department should make a determination that Verizon's conduct towards DSCI in responding to its requests to resell Verizon's CSP contracts was unreasonable, discriminatory, and anti-competitive; and (3) the Department should penalize Verizon for its unreasonable, discriminatory, and anti-competitive conduct (Exh. DSCI-18, at 3-4; Tr. at 13-14; DSCI Brief at 7, 14-17). We discuss these issues below.

B. Process for Responding to Future Requests for Resale of CSP Contracts

1. Positions of the Parties

a. DSCI

DSCI argues that its experience in seeking to resell Verizon's CSP contracts demonstrates that Verizon's process is anti-competitive and harms CLECs financially, because Verizon can win customers with "below-tariff telecommunications contracts" while CLECs are waiting for complete responses from Verizon regarding the terms and conditions of resale

(DSCI Brief at 14). For example, DSCI asserts that, while it was attempting to identify a Verizon CSP contract to resell to Colonial Automotive Group ("Colonial Automotive"), Verizon's retail business offered its own CSP contract to Colonial Automotive (id. at 14 n.55). DSCI objects to Verizon's newly-adopted response process<sup>12</sup> because of its voluntary nature and because it does not contain firm deadlines (DSCI Reply Brief at 4, 7, 9). According to DSCI, if Verizon were committed to developing and implementing an effective CSP contract resale process, Verizon would have sought CLEC input (DSCI Brief at 14-15). DSCI argues "that without Department intervention there is no assurance that DSCI or other CLECs would get a prompt and complete response to inquiries seeking information on reselling a Verizon CSP," and, therefore, urges the Department to adopt a process that requires Verizon to respond promptly and fully to CLEC inquiries (id. at 14).

DSCI proposes that for future CSP contract resale requests, Verizon should be required to provide a complete response within 14 days, with one additional 14-day extension for responding to complex requests (id. at 15). DSCI contends that its proposal is appropriate given that Verizon's recently-adopted voluntary commitment for responding to CSP contract resale requests is ten days, and the period for Verizon to process retail CSP contract pricing proposals to potential customers is five to 25 days (id. at 15; DSCI Reply Brief at 4).

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<sup>12</sup> Verizon indicates that, following its receipt of DSCI's requests to resell CSP contracts, Verizon began developing a formal process to respond to such requests (Exh. VZ-2, at 3).

b. Verizon

Verizon asserts that DSCI was only the second CLEC nationwide to request CSP contract terms and conditions from Verizon for resale (Verizon Brief at 3-4; Tr. at 89). As a result, at the time of DSCI's request, Verizon states that it had no formal process for handling CLEC requests (Verizon Brief at 4). Verizon contends that once DSCI made its requests to resell various CSP contracts, it began to establish a formal, multi-step process for handling such requests (*id.* at 3-4). According to Verizon, that process is now developed, and Verizon "is in the final stages of implementing this process" to respond to future CLEC requests to resell CSP contracts (Exh. VZ-2, at 3-5; Verizon Brief at 19; see also Tr. at 93-94).

Verizon states that the first step in the "new" process is for the CLEC to complete "a standard request form" and submit it to its Wholesale Account Manager (Exh. VZ-2, at 3). The request form gathers basic information about the requesting CLEC and the CSP contract that the CLEC seeks to resell (Tr. at 88). According to Verizon, the Account Manager will then forward the request form to Verizon's Wholesale organizations' Product Line Management ("PLM") to begin the data gathering process (Exh. VZ-2, at 3). Verizon indicates that the additional steps in the process are as follows:

- PLM
  - checks the form for accuracy and adds any additional relevant information, if applicable
  - assigns a tracking number and redacts information that might otherwise identify the Wholesale Customer to Verizon's Retail organization
  - forwards the updated request form to Wholesale Legal, Retail Legal, and Retail Business
- Retail Business and Legal retrieve Customer-requested CSP contract

- Wholesale and Retail attorneys
  - review the requested CSP and identify terms and conditions
  - secure Retail customer authority to share terms, if required by CSP or CPNI regulations
- Retail Legal and PLM
  - prepare a summary of contract terms for the Customer, redacting any information that would identify the Retail customer and other information prohibited for inclusion by CSP confidentiality provisions
  - forwards the summary of contract terms to Wholesale Account Management and PLM
  - Account Manager sends the summary of contract terms to the Customer for their review
- Customer Review
  - Account Manager makes arrangements for Customer to review actual CSP contract if requested
- Implementation
  - Customer signs letter of acknowledgment agreeing to resell in compliance with applicable terms of ICA and applicable law
  - PLM works with internal organizations and the Customer to implement the resold CSP

(id. at 3-4). Verizon did not assign time periods to the different steps in the process

(Tr. at 93). At the hearing, Verizon stated, “It is our intent to turn [the CSP contract resale request] around as quickly as possible based on the complexity of the CSP. Our goal would be to do it within ten business days” (id. at 93-94). According to Verizon, the “summary of terms” that Verizon will provide the CLEC to enable the CLEC to determine whether to resell the CSP contract “will include all of the material terms and conditions” that are contained in both the CSP tariff and the CSP contract (id. at 95, 97).

Verizon states that because it now has in place a process for handling CLEC requests to resell CSP contracts, which will permit CLECs to receive information on CSP contracts within

a reasonable time period while allowing Verizon to comply with its legal and contractual obligations, there is no need for the Department to impose a process on Verizon (Verizon Brief at 3). Verizon also opposes DSCI's proposed rigid deadlines, arguing that the 14-day time frame is based on an incorrect assumption that the level of complexity for Verizon to respond to a CLEC CSP contract resale request is the same as the level of complexity for Verizon to issue a retail CSP contract price quote (id. at 18). Verizon argues when it responds to a CLEC request to resell a CSP contract, coordination between Verizon's Wholesale and Retail organizations is required, but that this is not the case when Verizon generates a retail price quote (id. at 18). Finally, Verizon asserts that CLECs need not rely on Verizon for information about CSP contracts, because they have the ability to access Verizon's tariffed CSP contracts through an electronic database or by reviewing CSP contracts on file at the Department's offices (id. at 19).

## 2. Analysis and Findings

We agree with DSCI that a formal process that details Verizon's conduct in responding to CLEC requests for resale of CSP contracts will streamline the request process, and we commend Verizon for voluntarily undertaking to implement such a process (see Exh. VZ-2, at 3-5). As discussed in the following section, although the CSP resale requirement has been in effect since 1996, few CLECs have taken advantage of the option,<sup>13</sup> and Verizon's

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<sup>13</sup> Verizon states that, nationwide, only one other CLEC has inquired about CSP contract resale, and that CLEC ultimately did not enter into an agreement with Verizon to resell any CSP contracts (Exh. VZ-2, at 2; RR-DTE-VZ-4; Verizon Brief at 4). We note, however, that resale of CSP contracts was also an issue discussed in Maine's

(continued...)



explanation that it lacked a formal process to date is understandable in the absence of any demonstrated need. However, we agree with DSCI that resale (including CSP contract resale) has become more attractive to CLECs since the FCC's elimination of the unbundled network element platform ("UNE-P") (DSCI Brief at 4-5), and Verizon itself has been suggesting resale as an option for CLECs in a post-UNE-P market (Exh. DSCI-3; DSCI Brief at 4-5; DSCI Complaint at ¶ 11). Therefore, given both parties' agreement that a formal process to respond to CLEC requests for CSP resale will be beneficial, as well as an anticipated increase in such requests from CLECs in the future, we determine that a formal, Department-approved process will ensure that CLECs are able to obtain prompt market entry through CSP contract resale consistent with FCC requirements.<sup>14</sup>

We note that DSCI does not object to the mechanics of Verizon's proposed process (as contained in Exh. VZ-2, at 3-5; see also Tr. at 87-88), but only to its voluntary nature and the absence of firm deadlines (DSCI Reply Brief at 7). We agree with DSCI that the process must contain firm deadlines in order to provide CLECs with the assurance that their requests to

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<sup>13</sup>(...continued)

Section 271 proceeding, in which CTC Communications Corp. expressed its concerns regarding obtaining access to the terms and conditions of Verizon's CSP contracts. Maine Section 271 Inquiry, Docket No. 2000-849, Findings of the Maine Public Utility Commission, at 47-49, 51 (April 10, 2002). Therefore, while at the time of the hearing no CLEC had yet to enter into a CSP contract resale agreement with Verizon, CLECs have investigated the option.

<sup>14</sup> See Teleport Communications Group, Inc., D.T.E. 98-58, at 13 (1999). In D.T.E. 98-58, a CLEC, prompted by its experience attempting to obtain collocation at a Bell Atlantic central office, petitioned the Department to establish formal collocation procedures. Id. at 1-2. The Department agreed, and established specific time frames for Bell Atlantic to respond to, and implement, CLEC requests for collocation in order to ensure prompt CLEC market entry. Id. at 13-14.

resell CSP contracts will be processed promptly. A voluntary "goal" leaves too much discretion to Verizon, invites delays and other problems, and is inconsistent with the established framework of ILEC provisioning deadlines for other wholesale services, including other resold services.<sup>15</sup> Accordingly, for most requests, Verizon shall be required to provide CLECs with the summary of material terms within ten business days of receipt of the request form.<sup>16</sup> Although both DSCI and Verizon agree that additional time may be needed for complex requests, they disagree about the length of the additional time period. In responding to DSCI's proposal for a 14-day time period, Verizon's witness stated, "I haven't had enough experience to know whether that's reasonable. In the case of the COMA [CSP contract], it is a very complex contract. Additional time was warranted to identify the specific terms" (Tr. at 94). In the absence of a proposed time-frame from Verizon, the Department finds DSCI's proposal of 14 days to be reasonable and appropriate, because CLECs need assurance that even requests for resale of complex CSP contracts will be addressed by a date certain.

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<sup>15</sup> Verizon's performance relating to resold services (other than CSP contracts) are measured by the Carrier-to-Carrier ("C2C") Guidelines and the Massachusetts Performance Assurance Plan ("PAP"). See Verizon Section 271 Application, D.T.E. 99-271, Order Adopting Performance Assurance Plan (September 5, 2000). The C2C metrics measure resale in terms of ordering, provisioning and maintenance. The PAP measures Verizon's overall level of service on an industry-wide basis for each mode of CLEC market entry, including resale.

<sup>16</sup> Ten business days, proposed by Verizon (Tr. at 93-94; Verizon Brief at 19), is roughly the same as DSCI's proposal for 14 calendar days (Exh. DSCI-18, at 17-18).

Thus, we adopt an additional ten business day period for Verizon to respond to very complex CSP contract requests.<sup>17</sup>

We note that the deadlines we adopt here are similar to Verizon's approximately six to 27 day period for processing CSP contract requests for its retail business (Exh. DSCI-VZ-6 Supp), and that parity between retail and wholesale provisioning, where a retail analogue exists, is a fundamental component of the C2C metrics. Verizon argues that the work effort to respond to CLEC requests to resell CSP contracts is much greater than that required for processing retail CSP contracts because of "coordination between Verizon MA's Wholesale and Retail Organizations that is not required when Verizon MA generates a retail price quote" (Verizon Brief at 18). However, a substantial portion of the time involved in generating a retail price quote involves cost analysis and calculating the rates, work that is avoided in responding to CLEC requests for resale of CSP contracts.

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<sup>17</sup> As the Department found in D.T.E. 98-58, there may be circumstances beyond Verizon's control that may hinder its ability to process CLEC requests within the intervals set by the Department. D.T.E. 98-58, at 16. If so, Verizon may request an extension of the interval, and the Department may grant such extensions on a case-by-case basis. In deciding whether to grant a request for an extension, the Department will consider, among other things, the number of CLEC requests received by Verizon prior to its request for an extension. See id.

Accordingly, with these changes,<sup>18</sup> we approve Verizon's process for responding to CSP contract resale requests. Verizon shall submit a revised tariff page for inclusion in Verizon's resale tariff, D.T.E. MA No. 14, indicating the Department-approved time frames for response to CLEC requests to resell CSP contracts. Verizon shall also submit for Department approval a separate, revised version of its step-by-step response process in compliance with our findings herein. Both filings are required within ten business days of the date of this Order.

C. Verizon's Conduct and Imposition of Penalties

1. Positions of the Parties

a. DSCI

DSCI requests that the Department find Verizon's conduct in responding to DSCI's requests to resell various CSP contracts has been unreasonable, discriminatory, and anti-competitive (Exh. DSCI-18, at 4, 8; DSCI Brief at 1). DSCI claims that "[w]hether due to unfamiliarity with the CSP resale process, poor coordination among Verizon departments, or a disinclination to devote internal resources to facilitate a potentially potent new form of resale competition, Verizon has delayed and, to date, prevented DSCI" from reselling various CSP contracts (DSCI Brief at 14). Specifically, DSCI contends that Verizon has not provided

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<sup>18</sup> We note that Verizon's intention to "redact[ ] any information that would identify the Retail customer and other information prohibited for inclusion by CSP confidentiality provisions" (Exh. VZ-2, at 4) in the summary of contract terms to be forwarded to CLECs may not be consistent with Verizon's obligations to provide this information to the Department in its CSP tariff filings. See G.L. c. 25, § 5D (Department may protect from public disclosure only such information that falls into narrowly defined exceptions); G.L. c. 159, § 19 (tariffs shall be "ke[pt] open to public inspection").

prompt and complete responses to inquiries seeking information of the relevant terms and conditions for selling the COMA, Customer 38, and Cape Cod Five Savings Bank ("Cape Cod Five") CSP contracts and has changed its position repeatedly as to whether DSCI meets the requirements for reselling the CSP contracts in question (*id.*). DSCI states that even after it filed its Complaint with the Department, Verizon's unreasonable conduct has continued such that, to date, DSCI has been unable to resell any Verizon CSP contract (Tr. at 40; DSCI Brief at 6).

DSCI contends that it began discussions with Verizon regarding CSP contract resale options in July 2004, and specifically discussed the use of the COMA CSP contract to serve DSCI's customer base (DSCI Brief at 5). According to DSCI, at the time, Verizon never objected to DSCI's stated intentions to use the COMA CSP contract for its business customers (DSCI Reply Brief at 5). DSCI asserts that in Fall 2004 it submitted a formal request, as required by Verizon, for reselling the COMA CSP contract, and that Verizon notified DSCI that it qualified to resale the contract on December 17, 2004 (Exh. DSCI-6; DSCI Brief at 5-6). DSCI asserts that, even while the parties worked through "joint planning activities" for transitioning DSCI's customer base to the COMA CSP contract, Verizon had yet to mention the "Eligible Entities" restriction (DSCI Reply Brief at 5-6). DSCI asserts that Verizon's "belated change of position" did not occur until March 2005, when Verizon, for the first time mentioned its restriction allowing resale only to "Eligible Entities" (*id.* at 6).

DSCI also sought to combine the Customer 38 CSP contract's usage rates with the COMA CSP contract, and DSCI argues that it experienced the same types of "excessive

delays” from Verizon (DSCI Reply Brief at 6). DSCI contends that it first told Verizon that it wanted to pursue this arrangement on December 17, 2004, and that its “intentions were made crystal clear” on January 10, 2005 (id.). DSCI claims Verizon “changed its position several times on the minimum volume commitments, including once after DSCI confirmed it could meet the commitment cited” (DSCI Brief at 12). According to DSCI, Verizon provided DSCI with critical information about volume commitments only after DSCI told Verizon it was filing a Complaint with the Department in March 2005 (id.). DSCI contends it took Verizon an additional two months (until May 2005) to provide information as to the tariff provisions that would apply in the event DSCI did not meet the volume commitments (id.). Moreover, DSCI asserts that Verizon has refused to disclose its position on whether customers being served by Verizon under the Customer 38 CSP contract will face termination liability if they switch to DSCI service under the Customer 38 CSP contract (id. at 13, citing Tr. at 42-44; Exh. VZ-4; DSCI Reply Brief at 6-7). DSCI argues that clarification of this issue is necessary to avoid “expensive and disruptive [future] litigation” and requests that the Department order Verizon to respond (DSCI Brief at 13-14).

In addition, DSCI argues that at the same time DSCI was talking to Verizon about reselling the COMA and Customer 38 CSP contracts, DSCI also had discussions with Verizon regarding reselling various CSP contracts to its existing customer, Colonial Automotive (DSCI Brief at 6, citing Exh. DSCI-18, at 8-9; Tr. at 11-12). DSCI first requested to resell to Colonial Automotive a price quote that Verizon’s Retail organization had offered Colonial Automotive, which Verizon denied because the price quote was a proposal and not a CSP

contract (Exh. DSCI-18, at 13; DSCI Complaint at ¶ 34). Then, on November 15, 2004, DSCI requested to resell the Cape Cod Five CSP contract to Colonial Automotive (Exh. DSCI-18, at 13; DSCI Complaint at ¶ 34). DSCI asserts that Verizon initially gave approval, but then shortly thereafter notified DSCI that Colonial Automotive would not meet the “geographic restrictions” contained in the CSP contract and that DSCI should identify another CSP contract to resell to Colonial Automotive (Exh. DSCI-18, at 13; DSCI Complaint at ¶ 37). DSCI informed Verizon that “it was unreasonable for Verizon to block DSCI’s access to CSP [contract] pricing for Colonial [Automotive] based upon terms and conditions that had no bearing on Verizon’s cost to deliver the service and are not made available to DSCI to review” (DSCI Complaint at ¶ 38; Exh. DSCI-18, at 13). DSCI states that Verizon still has not responded to its last request to resell a CSP contract to serve Colonial Automotive through either the price quote or the Cape Cod Five CSP contract (DSCI Reply Brief at 7 n. 26; DSCI Complaint at ¶ 39).

With regard to imposition of penalties, DSCI requests that the Department “impose a monetary fine on Verizon, to be paid to DSCI, as reparation for the substantial delays and lack of response to DSCI’s requests to provision services under relevant CSP [contract] terms and conditions” (DSCI Brief at 16-17). DSCI contends that the fine should be in an amount that represents Verizon’s noncompliance with its resale obligations under Federal and state law (DSCI Reply Brief at 8). DSCI asserts that several sections of G.L. c. 159 authorize the Department to fine Verizon for unreasonable and anti-competitive practices, specifically G.L. c. 159, §§ 12, 13, 14 and 16 (*id.* at 7).

b. Verizon

Verizon argues that it has responded promptly and in good faith to DSCI's CSP contract resale requests and that it has provided DSCI with appropriate information for DSCI to identify and resell Verizon's CSP contracts (Verizon Brief at 1). Verizon contends that at the time DSCI requested to resell the COMA CSP contract in November 2004, neither party had experience with the resale of CSP contracts, and Verizon did not have a formal process in place to respond to DSCI's request (*id.* at 3-4). Verizon argues that it "immediately began working with DSCI to determine its needs" and to develop a process to assemble the COMA CSP contract and provide DSCI with its terms and conditions for resale (*id.* at 4). Verizon states that coordination between Verizon's Wholesale and Retail units was required, because Verizon's Retail organization maintains the CSP contracts (*id.*). The process of gathering the documents and information, according to Verizon, "proved to be quite involved" given the "unique complexity" of the COMA CSP contract, which is voluminous and consists of "numerous documents from multiple sources" (*id.*). Verizon states that compiling the terms and conditions and obtaining authorization from the Commonwealth to disclose information to DSCI took a significant amount of time (*id.* at 4-5).<sup>19</sup> After Verizon provided the requested information to DSCI, the parties executed a resale agreement for the COMA CSP contract on January 5, 2005 (*id.* at 5). Verizon asserts that on March 3, 2005, it was surprised to learn

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<sup>19</sup> According to Verizon, "[T]his was not a simple task, because . . . [the COMA CSP contract and Customer 38 CSP contract] . . . are particularly complex contracts. Although our legal experts were able to describe the terms and conditions of the referenced CSPs, the process was more time consuming than we could reasonably have anticipated" (Exh. VZ-2, at 2-3).



that DSCI was violating the terms of the contract by attempting to resell the COMA CSP contract to its “multi-location commercial customer[s]” rather than only to the “Eligible Entities” as Verizon asserts is required (id.; Verizon Answer at ¶ 25). Verizon contends that from earlier discussions with DSCI, DSCI had lead Verizon to believe that DSCI would be reselling the CSP contract only to the “Eligible Entities” and that DSCI had “a significant number of customers” that met the requirement (Verizon Brief at 5-6; Verizon Answer at ¶ 20).

Verizon also argues that it misunderstood DSCI’s earlier request regarding resale of the Customer 38 CSP contract, and it was not until January 10, 2005, that Verizon became aware of DSCI’s desire to resell the Customer 38 CSP contract in combination with the COMA CSP contract (Verizon Brief at 6). Once the confusion was cleared up, Verizon asserts that it began working with DSCI to provide it with the information it sought, including information about minimum term and volume commitments (id.). This included seeking authorization from the Commonwealth to disclose proprietary term and volume commitment information to DSCI (id.; Verizon Answer at ¶ 30). Verizon asserts that once the authorization was obtained, on March 21, 2005, Verizon provided the requested information to DSCI (Verizon Answer at ¶ 30). In addition, Verizon states that it provided DSCI with additional information on the Customer 38 CSP contract, after DSCI’s Complaint was filed, including the material terms and conditions and a proposed resale agreement (Verizon Brief at 6-7).

Concerning DSCI’s request for clarification of termination liability provisions applicable to the COMA and Customer 38 CSP contracts, Verizon states that it responded to

DSCI on June 8, 2005 that “legal interpretation of the contract is a matter best undertaken between DSCI and [DSCI’s legal] counsel” (Verizon Reply Brief at 3). Verizon asserts that, as a general matter: (1) it has no legal or statutory obligation to provide DSCI, or any CLEC, with a legal position on all provisions of a CSP contract prior to executing an agreement for resale; (2) where CSP contract terms are ambiguous, it will endeavor to provide clarification; (3) CLECs have the responsibility to review the terms and conditions of CSP contracts themselves; and (4) for the parties to try to resolve up-front all legal issues related to a CSP contract would unnecessarily delay the process (*id.* at 4-5). In this case, however, Verizon argues that the contract provisions are “clear and unambiguous,” and the Department should deny DSCI’s request for a legal interpretation (*id.* at 3). Nevertheless, Verizon states that “like the Commonwealth, [DSCI] would be able to terminate any resale agreement it enters with Verizon MA to resell the COMA CSP without cause and without penalty” (*id.* at 4).

Verizon also argues that it responded appropriately to DSCI’s requests relating to Colonial Automotive (Verizon Brief at 7). Verizon states that in late October 2004, DSCI first discussed reselling a CSP contract to serve Colonial Automotive (*id.*). According to Verizon, DSCI initially requested to resell a price quote that Verizon had made to Colonial Automotive (*id.*). Verizon states that it denied that request because it is not required to resell price quotes under federal law (*id.*). Verizon argues that DSCI then inquired about reselling Verizon’s Cape Cod Five CSP contract to Colonial Automotive (*id.*). Verizon states that, contrary to DSCI’s claims, it clearly told DSCI the conditions that applied to the Cape Cod Five CSP

contract, such as a limitation to resell frame relay services only to customers in UNE Density Zone 3 (id. at 16-17).

In response to DSCI's request that the Department impose monetary penalties upon Verizon for its unreasonable conduct towards DSCI, Verizon contends that penalties are not warranted because Verizon acted in good faith in responding to DSCI's requests to resell CSP contracts (id. at 19-20). Moreover, Verizon argues that the Department lacks statutory authority to reward reparations which are punitive in nature (id. citing Whitinsville Water Company v. Sidney Covich, 24 Mass. App. Ct. 925, 926 (1987)).

## 2. Analysis and Findings

While the record is replete with miscommunications and misunderstandings between the two parties (see, e.g., Exh. DSCI-18, at 13; DSCI Brief at 5-6, 12; DSCI Reply Brief at 6; Verizon Brief at 5-6, 7, 16-17; Tr. at 24), we do not find that Verizon acted in bad faith, intentionally delayed responding to DSCI, or otherwise acted as anything other than a large company attempting to respond to unfamiliar requests in an area of unclear responsibility. Verizon's responsiveness was stymied by the lack of a formal process to respond to CLEC requests to resell CSP contracts, and the parties' miscommunication was exacerbated by the fact that neither Verizon nor DSCI had any prior experience entering into an agreement regarding CSP contract resale. Also, the process was prolonged by the substantive disagreement between the parties regarding Verizon's legal obligations to resell its CSP contracts.

Turning to DSCI's request that the Department impose monetary penalties on Verizon to be paid to DSCI for Verizon's unreasonable conduct, we deny DSCI's request. Verizon is correct that the Department lacks general statutory authority under G.L. c. 159 to assess fines, penalties, or reparations for unreasonable conduct or practices by common carriers. The statutes cited by DSCI pertain to specific Department fining authority (e.g., failure to file annual returns, slamming penalties) and are not applicable here. Moreover, such a step is unnecessary given that CLECs, through their participation in the development of the C2C Guidelines,<sup>20</sup> have the opportunity to propose and develop additional resale metrics and penalties for inclusion in the C2C Guidelines and the PAP.

#### VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Verizon's restriction on the resale of the COMA CSP contract solely to "Eligible Entities" is reasonable and nondiscriminatory; and it is

FURTHER ORDERED: That DSCI is precluded from combining the usage rates contained in Verizon's Corporate Rewards tariff with the per-line rates contained in the COMA CSP contract;

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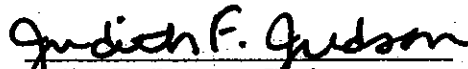
<sup>20</sup> The Department has adopted New York's C2C Guidelines as amended on a going-forward basis. Verizon Section 271 Application, D.T.E. 99-271, at 14, Order on Motions for Clarification and Reconsideration Regarding Performance Assurance Plan (November 21, 2000). When the New York Carrier Working Group or New York Public Service Commission incorporates new metrics into the New York C2C Guidelines, they automatically flow through to the Massachusetts C2C Guidelines. Amendments to the New York PAP, however, must be approved by the Department before becoming effective in Massachusetts.

FURTHER ORDERED: That Verizon shall submit procedures for responding to CLEC requests for CSP contract resale, as described herein, within ten business days of the date of this Order; and it is

FURTHER ORDERED: That DSCI's request that the Department impose monetary penalties on Verizon is denied; and it is

FURTHER ORDERED: That the parties shall comply with all other directives contained herein.

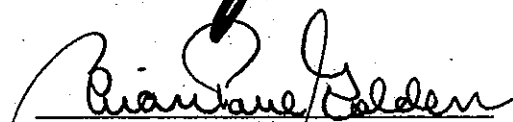
By Order of the Department,

  
Judith F. Judson, Chairman

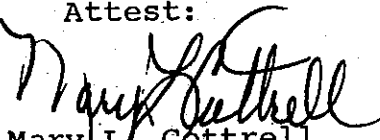
  
James Connelly, Commissioner

  
W. Robert Keating, Commissioner

  
Paul G. Afonso, Commissioner

  
Brian Paul Golden, Commissioner

A True Copy  
Attest:

  
Mary L. Cottrell,  
Secretary

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court.  
G.L. c. 25, § 5.